

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Enkay Engineering and
Equipment, Incorporated
1639 Monrovia Avenue
Costa Mesa, California 92627

CAD981438351

Respondent.

Docket HWCA 2004-0418

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Enkay Engineering and Equipment, Incorporated (Respondent) enter into this Consent Order and agree as follows:

1. Respondent is a registered hazardous waste hauler with current registration number 2185, and is located at 1639 Monrovia Avenue, Costa Mesa, California 92626 (Site).

2. The Department inspected the Site on January 13, 2004.

3. The Department alleges the following violation:

3.1 The Respondent violated Health and Safety Code section 25163, in that from January 01, 2003 to January 13, 2004, Respondent transported hazardous wastes without a valid registration issued by the Department.

4. A dispute exists regarding the alleged violation.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violation alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondent does not admit the violation alleged above, except as follows: Respondent admits the facts alleged above for the purposes of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., within five years of the date the violation occurred.

SCHEDULE FOR COMPLIANCE

10. Respondent certified through its submittal dated March 2, 2004, that the violation alleged above has been corrected.

10.1. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent to:

Carmelita E. Lampino, Unit Chief
Statewide Compliance Division, Cypress Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

10.2. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her

designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.3. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.4. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.5. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.6. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right

of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.7. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.8. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.9. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11. Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$10,500, of which \$9,100 is a penalty and \$1,400 is reimbursement of the Department's costs. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall identify the Respondent and Docket Number as shown in the heading of this Consent Order. Respondent shall deliver the payment together with the attached payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Carmelita E. Lampino, Unit Chief
Statewide Compliance Division, Cypress Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

Debra Schwartz, Staff Counsel
Department of Toxic Substances Control
1011 N. Glenview Avenue
Glendale CA 91201

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Consent Order.

12.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or California Regional Water Quality Control Board.

Dated: 9/27/04

Original signed by Charles Baur Jr.

Charles Baur Jr., President
Enkay Engineering and Equipment,
Incorporated

Dated: 9/28/04

Original signed by Carmelita E. Lampino

Carmelita E. Lampino, Unit Chief
Statewide Compliance Division,
Cypress Branch
Department of Toxic Substances
Control